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Supreme Court, U.S.
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No. 95-132

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

GEORGE V. VOINOVICH, STANLEY J. ARONOFF, ROBERT A. TAFT, II, and JAMES R. TILLING, Appellants,

v.

BARNEY QUILTER, THOMAS E. FERGUSON, GLEN ACHTERMANN, SAM BARONE, SANDRA GUY, ROBERT McLAUGHLIN, JAMES B. McCARTHY, GLADYS HENSON, TOM KILBANE, ROBERT H. TRAINER, A. WAYNE BUSSLER, JAMES B. SPEROS, KENNETH THORNE, CHARLES WALKER, WILLIAM SHANKLIN, TYRONE RILEY, RICHARD CORDRAY, PAUL MECHLING, RONALD GERBERRY, MARY ABEL, and
WILLIAM MALLORY, Appellees.

APPELLEES' MEMORANDUM IN OPPOSITION TO APPELLANTS' MOTION TO DEFER CONSIDERATION OF JURISDICTIONAL STATEMENT

To the Honorable John Paul Stevens, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

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APPELLEES' MEMORANDUM IN OPPOSITION TO APPELLANTS' MOTION TO DEFER CONSIDERATION OF JURISDICTIONAL STATEMENT

To the Honorable John Paul Stevens, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Appellants' Motion to Defer Consideration of Jurisdictional Statement must be denied. The Jurisdictional Statement for which Appellants request deferred consideration was improperly filed by Appellants, in the course of improvident appeals from Opinions of the District Court which were never entered as judgments, and which were subsequently vacated by the District Court. Deferring consideration of that Jurisdictional Statement -- particularly for the stated purpose of allowing it

to be considered along with a forthcoming Jurisdictional Statement in another appeal by Appellants -- creates three problems: (1) unnecessary delay in the inevitable recognition of the fact that the pending Jurisdictional Statement was and is improper; (2) unnecessary confusion about which of the District Court's actions Appellants properly can and actually do challenge by appeal; and (3) unnecessary confusion about the grounds on which Appellants purport to be proceeding.

By way of a brief background, on April 28, 1995, the majority of the three-judge panel in the District Court entered an Opinion in the action below. Appellants' Jurisdictional Statement, Appendix A. No judgment was then entered. Indeed, on May 9, 1995, the District Court issued a supplemental Order inviting the parties to submit proposed remedies, "preparatory to filing a Rule 54 Judgment Entry." Appellant's Jurisdictional Statement, Appendix B (emphasis added).

On May 26, 1995, despite the absence of any judgment, Appellants filed a premature and improper Notice of Appeal to this Court from the April 28 Opinion, and the May 9 Order of the District Court. Appellants' Jurisdictional Statement, Appendix H. However, also on May 26, 1995, and without reference to the premature appeal, the majority of the three-judge panel in the District Court issued an Order vacating their April 28 Opinion, Appellants' Jurisdictional Statement, Appendix F, and a new

Opinion was entered. Appellants' Jurisdictional Statement, Appendix C. Once again, no judgment was then entered.

On June 23, 1995, again despite the absence of any judgment, Appellants filed a Notice of Appeal to this Court from the May 26 Opinion of the District Court. Appellants' Jurisdictional Statement, Appendix I. On July 24, 1995, Appellants filed their Jurisdictional Statement regarding their appeal from the April 28 and May 26 Opinions, and the May 9 Order. It is this Jurisdictional Statement for which Appellants now request that consideration be deferred.

However, on August 11, 1995, the majority of the three-judge panel in the District Court issued an Order vacating the May 26 Opinion. Appellants' Supplement to Application to Stay Orders [etc.], Appendix A. As a result, judgment was never entered on either of the Opinions which are the subject of Appellants' pending Jurisdictional Statement, and both of those Opinions have now been vacated by the District Court. As noted above, the May 9 Order of the District Court, which is the only other possible subject of the pending Jurisdictional Statement, expressly indicated that it was preparatory to any judgment.1/

1/ On August 11, 1995, upon vacating the May 26 Opinion, the District Court entered another new Opinion. Appellants' Supplement to Application to Stay Orders [etc.], Appendix B. However this time, on the same day, the District Court also filed a separate Judgment, their first and only Judgment regarding the various matters currently appealed by Appellants, which Judgment directs Appellants to comply with (continued...)

Obviously, Appellants' pending Jurisdictional Statement does not relate to any current, viable, appealable action by the District Court. Although Appellants have appealed from the August 11, 1995 actions of the District Court, including the only Judgment recently entered below, there is no reason to defer consideration of the pending Jurisdictional Statement for purposes of considering it with some future jurisdictional statement relating to the matters recently appealed. The pending Jurisdictional Statement improperly concerns Opinions which were not entered as judgments and which the District Court has already set aside; accordingly, the pending Jurisdictional Statement should be recognized right now as being inappropriate, and the appeals which it supports should be dismissed.

1/ (...continued)
the August 11 Opinion. Appellants' Supplement to Application to Stay Orders [etc.], Appendix D.

On August 17, 1995, Appellants filed a Notice of Appeal to this Court from the various filings of the District Court on August 11, 1995, including, remarkably, an express appeal from a Supplemental Dissenting Opinion filed by the dissenting member of the three-judge panel, who would appear to support Appellants' position in this litigation. In any event, Appellants' August 17 Notice of Appeal does at least recite that an appeal is taken from the District Court's August 11, 1995 Judgment. See Appellants' Motion to Defer [etc.], Exhibit A.

For the foregoing reasons, Appellants' Motion to Defer Consideration of Jurisdictional Statement should be denied.

Respectfully submitted,

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WILLIAM MALLORY, Appellees.

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 29.5(b), the undersigned, a member of the Bar of this Court, hereby certifies that three true and accurate copies of Appellee' Memorandum in Opposition to Appellants' Motion to Defer Consideration of Jurisdictional Statement was class postage prepaid, upon the following this 8th day of September, 1995:

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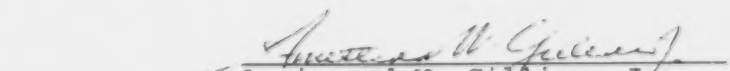

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